



RESPONSE TO RESTRICTION	Application #	10/507,258
	Confirmation #	4864
	Filing Date	September 10, 2004
	First Inventor	PEZZOTTI
	Art Unit	1797
	Examiner	Ramdhanie, Bobby
	Docket #	P09409US00/DEJ

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

In response to the restriction requirement contained in the Office Action dated March 25, 2008, Applicant hereby elects the invention of Group I, apparatus claims 17-28 and 44-57, to be examined; but the requirement for this election is **traversed** as follows.

In the Office Action, the examiner asserted that the two apparatus and method inventions did not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the two inventions did not make a contribution over the Kakibayashi patent of record. In particular, the examiner identified the common technical feature of the two groups of inventions as a "stress measuring device". However, a proper analysis of the claims shows that the "stress measuring device" is not the common technical feature of the claims, but merely the preamble recitation of what is the broad invention being claimed. With a proper analysis of the claims, it is evident that the common technical feature of the present invention is the generation of two spectrums from a specimen when the specimen is in two different states so that a comparison of the two spectrums is determinative of stress in the specimen.

The Kakibayashi patent obviously does not disclose or make obvious this common technical feature of using two spectrum/comparison stress determination. In particular, the Kakibayashi patent does not even use the term "stress" therein; and, in fact, the Kakibayashi patent has nothing to do with any stress measurement in a specimen even if the examiner's asserted common technical feature of a stress measuring device were proper. Rather, the Kakibayashi patent discloses an electron microscope whereby 3-dimensional observation of the atomic arrangement and atomic species in a thin-film specimen is made (see Abstract) . In particular, the invention concerns an electron detection instrument for observing an electron microscope image corresponding to a specific atomic configuration or crystal structure of a specimen by way of measuring scattered, diffracted, refracted, or transmitted electrons through a specimen (See 1/21-26.)

Thus, about the only things that the present invention and the Kakibayashi patent have in common is the use of an electron beam which is directed at a specimen. However, the present invention is directed to determining stress in the specimen by use of an electron beam which irradiates the specimen so that the specimen emits a spectrum of light radiation in two different states. On the other hand, the electron beam of the Kakibayashi patent is used to produce an image of a portion of the specimen using the electrons from the electron beam as the electrons are scattered, diffracted, refracted, or transmitted by the specimen; which electrons from the electron beam are then detected by an electron-photon converting scintillator coupled to an avalanche-type imaging device. Obviously, there is a significant difference between stress measuring of a specimen and imaging of a specimen. More importantly, the Kakibayashi patent does not disclose nor make obvious the common technical feature of the claims of the present invention (of using two spectrum/comparison stress determination).

Therefore, it is submitted that claims 1-57 do have a common technical feature which is not disclosed by the Kakibayashi patent, so that claims 1-57 should all now be examined together.

Respectfully submitted,

Date: June 11, 2008

Douglas E. Jackson
By: Douglas E. Jackson
Registration No.: 28,518

STITES & HARBISON PLLC ♦ 1199 North Fairfax St.. ♦ Suite 900 ♦ Alexandria, VA 22314
TEL: 703-739-4900 ♦ FAX: 703-739-9577 ♦ CUSTOMER No. 00881